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CNEX LABS, INC. and YIREN HUANG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

YIREN HUANG, an individual, and CNEX
LABS, INC., a Delaware corporation,

Plaintiffs,

v.

FUTUREWEI TECHNOLOGIES, INC., a Texas
corporation, and HUAWEI TECHNOLOGIES
CO., LTD., a Chinese corporation and DOES 1
through 10,

Defendants.

Case No.: 5:18-cv-00534-BLF

**FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

(original complaint filed in Santa Clara
County Superior Court Case No.
17cv321153)

Complaint Filed: Dec. 28, 2017

NATURE OF THE ACTION

1
2 1. Plaintiffs Yiren Ronnie Huang (“Mr. Huang”) and CNEX Labs, Inc. (“CNEX”) (collectively “Plaintiffs”) seek judicial relief from an unfair and unlawful pattern of conduct by Defendants Futurewei Technologies, Inc. (“Futurewei”) and Huawei Technologies Co., Ltd. (“Huawei”) (collectively, “Defendants”) aimed at increasing the burden and unfairly increasing the costs of resolving disputes involving their former employees. By way of example, Defendants require employees to execute adhesion contracts containing numerous provisions that violate strong public policies of California, including without limitation (i) provisions specifying governing law other than California, (ii) forum-selection clauses specifying venue for disputes other than California, (iii) invention assignment clauses requiring assignment of inventions not conceived during employment or otherwise based on confidential information of Defendants, and (iv) non-compete/non-solicitation clauses. Upon information and belief, Defendants know that the contracts that their California employees are required to sign violate strong public policies of California and do not provide employees the opportunity to negotiate with respect to those provisions violating California public policy. On information and belief, Defendants take this course of action with the aim of inhibiting employees from exercising and protecting their rights under California law, and to drive up the cost of engaging in a dispute with Defendants. The State of California has an expressly stated and fundamental public policy against contracts that seek to restrain employees from engaging in a lawful profession, trade or business. By the claims asserted herein, Plaintiffs seek a declaration that the unlawful restrictive covenants are void as a matter of California law and unreasonable in their terms and scope, and for these reasons cannot be enforced against Mr. Huang or CNEX.

23 2. Defendants also seek a declaration that they have not committed certain violations alleged by Defendants, including without limitation breach of contract for failure to disclose and assign patents containing Futurewei technology, breach of contract for disclosure of confidential information, breach of contract for solicitation of Futurewei employees, misappropriation, threatened misappropriation, and conspiracy to misappropriate trade secrets under the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836 et seq., misappropriation of trade secrets under

common law, misappropriation, threatened misappropriation, and conspiracy to misappropriate trade secrets under Texas Uniform Trade Secrets Act (“TUTSA”), tortious interference with contractual relations, tortious interference with prospective business relations, conspiracy to commit Computer Fraud and Abuse Act (“CFAA”) 18 U.S.C. §§ 1030, et seq., violations of and conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act (“RICO”) 18 U.S.C. § 1962(c), conversion, breach of fiduciary duty, unjust enrichment, common law civil conspiracy, corporate raiding, and unfair competition under the Lanham Act 15 U.S.C. § 1125(a) and Texas Common and Statutory Law.

JURISDICTION AND VENUE

3. This Court has jurisdiction because the matter in controversy exceeds the sum or value of \$75,000, with a specific remedy sought under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, as well as addresses issues of federal law. An actual, substantial, and continuing justiciable controversy exists between CNEX, Mr. Huang, Futurewei and Huawei given their multi-year dispute with respect to issues raised herein, as evidenced by a related case pending in the United States District Court for the Eastern District of Texas. Case No. 4:17-cv-00893 (the “Texas Action”). A true and correct copy of the Complaint in the Texas Action is attached hereto as Exhibit A. The Court also has jurisdiction because Futurewei removed this action to federal court pursuant to 28 U.S.C. § 1441(b). (*See* Notice of Removal (Dkt. No. 1) ¶ 5.)

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. All of the events giving rise to the claims occurred in this judicial district under § 1391(b)(2). The Employment, Confidentiality, Proprietary Information and Inventions Agreement between Futurewei and Mr. Huang executed on January 19, 2011 (the “Employment Agreement”) was negotiated and entered into in this judicial district and the conduct at issue, including the performance of obligations under the Employment Agreement, took place in the County of Santa Clara, State of California. The technology at issue in this matter was developed in this judicial district and the assignment transferring Mr. Huang’s patent rights to CNEX was negotiated and executed in this judicial district.

5. The Employment Agreement contains a forum-selection clause (among other

1 clauses that violate the strong public policy of California) specifying that Mr. Huang agrees to the
2 “exclusive personal jurisdiction and venue of any court on Collin County Texas.” A true and
3 correct copy of the Employment Agreement is attached hereto as Exhibit B.. The Employment
4 Agreement, including this forum-selection clause, violates strong California public policy and thus
5 is not enforceable. Nevertheless, Defendants have already waived enforceability of this forum-
6 selection clause by filing the Texas Action, which includes claims based on the Employment
7 Agreement, in a court not located “on Collin County Texas.” Specifically, Defendants filed the
8 Texas Action in the United States District Court located in Sherman, Texas, which is located in
9 Grayson County, Texas.

10 6. This Court has personal jurisdiction over Futurewei and Huawei because Futurewei
11 and Huawei have established minimum contacts with the forum and the exercise of jurisdiction
12 over Futurewei and Huawei would not offend traditional notions of fair play and substantial justice.
13 Futurewei and Huawei regularly conduct business in California, Futurewei maintains offices in
14 this judicial district, and Huawei’s employees travel to and conduct business in Futurewei’s
15 facilities in this judicial district. The Court also has personal jurisdiction over Futurewei because
16 it removed this action to federal court. (*See* Notice of Removal (Dkt. No. 1) ¶ 5.)

17 THE PARTIES

18 7. Mr. Huang is an individual currently residing in Santa Clara County, California.
19 Mr. Huang has been a California resident since approximately January, 1989. Mr. Huang has been
20 domiciled in Santa Clara County, California since that time.

21 8. CNEX is a Delaware corporation with its principal place of business in San Jose,
22 California.

23 9. According to the website of Futurewei’s parent company, Huawei, the “Futurewei
24 (R&D) USA Headquarters” are located at 2220 Central Expressway, Santa Clara, California
25 95050.

26 10. Defendant Huawei is a multinational company headquartered in Shenzhen, China.
27 On information and belief, Huawei’s principal place of business is located at Huawei Industrial
28 Base, Bantian, Longgang District, Shenzhen, Guangdong, P.R. China 518129.

1 11. The true names and capacities, whether individual, corporate or otherwise, of
2 Defendants DOES 1-10, inclusive, are unknown to Plaintiffs, who therefore sue each and all of
3 them by such fictitious names. Plaintiffs will seek leave to amend this Complaint to allege their
4 true names and capacities when they have been ascertained. Plaintiffs are informed and believe
5 and thereon allege that each of the fictitiously named Defendants is responsible in some manner
6 for the occurrences herein alleged.

7 GENERAL FACTUAL ALLEGATIONS

8 12. This is a case involving unfair and unlawful practice by Defendants aimed at
9 creating barriers to prohibit and/or unduly limit California companies and persons from exercising
10 their rights under California law. Specifically, Defendants knowingly coordinate to impose
11 provisions in employment contracts with persons residing and working in California that violate
12 California public policy and law. Upon information and belief, Defendants know that these
13 provisions violate California public policy and law, and Defendants nevertheless include the
14 provisions in employment contracts in California for the purpose of misleading employees
15 regarding their rights and obligations with respect to their employment relationship with
16 Defendants. Further, upon information and belief, Defendants knowingly include these unfair
17 and unlawful provisions in employment contracts with California employees to increase the burden
18 and cost of employees defending and/or exercising their rights under the contracts, given that such
19 defense and enforcement is purportedly required to take place in a foreign state under foreign laws.

20 13. Mr. Huang's Employment Agreement with Futurewei—which, upon information
21 and belief, is the result of Defendant Huawei's direction—serves as an example of Defendants'
22 use of unfair and unlawful employment contracts to create barriers and added costs to employees
23 enforcing and/or defending their rights under California law.

24 14. Mr. Huang is an engineer and inventor who has lived and worked in the state of
25 California since 1989. In June of 2013, Mr. Huang co-founded CNEX, which is chartered to
26 deliver innovative system solutions in the form of semiconductors and software. CNEX is
27 headquartered in San Jose, California.

28 15. Futurewei maintains significant ties to California. On information and belief,

Futurewei has offices in at least Santa Clara and San Diego. On information and belief, Futurewei has extensive operations in California, and, as of December 2017, employs over 130 employees in California.

16. Futurewei is a subsidiary of its parent company, Huawei. Huawei also has significant ties to California. On information and belief, Huawei has significant operations there, and its employees travel to and conduct business in Futurewei's facilities there.

17. In 2011, Mr. Huang accepted a position of at-will employment at Futurewei in California. On or about January 19, 2011, Futurewei required Mr. Huang to sign the Employment Agreement. Ex. B. Pursuant to the terms of the Employment Agreement, which was presented and entered into in California, Mr. Huang for a limited time functioned as a principal architect working solely in California and with his primary job responsibilities at Futurewei's R&D facility in Santa Clara, California.

18. During his employment with Futurewei, Mr. Huang was at all times a resident of California and worked at Futurewei's office in California, and sometimes traveled to China. Mr. Huang did not travel to Huawei's office in Texas for any purpose.

19. As a condition of his employment, Mr. Huang was required to enter into broad covenants with Futurewei that required him to assign his rights to certain inventions that he developed entirely on his own time without using Defendants' equipment, supplies, facilities, or trade secrets, including inventions Mr. Huang developed at a time when he was not employed by Futurewei, and that purported to restrain his ability to engage in his lawful trade and profession in California as a senior researcher, engineer, and inventor.

20. Section 3 of the Employment Agreement provides in relevant part:

(a) Definition. The term "Subject Ideas or Inventions" includes any and all ideas, processes, trademarks, service marks, inventions, designs, technologies, computer hardware or software, original works of authorship, formulas, discoveries, patents, copyrights, copyrightable works, products, marketing, and business ideas, and all improvements, know-how, data, rights, and claims related to the foregoing that, whether or not patentable, are conceived, developed or created which: (1) relate to the Company's current or contemplated business or activities; (2) relate to the Company's actual or demonstrably anticipated research or developments; (3) result from any work performed by me for the Company; (4) involve the use of the Company's equipment, supplies, facilities or trade

secrets; (5) result from or are suggested by any work done by the Company or at the Company's request, or any projects specifically assigned to me; or (6) result from my access to any of the Company's memoranda, notes, records, drawings, sketches, models, maps, customer lists, research results, data, formulae, specifications, inventions, processes, equipment or other materials (collectively, "Company Materials").

(b) Company Ownership. All right, title, and interest in and to all Subject Ideas and Inventions, including but not limited to all registrable and patent rights which may subsist therein, shall be held and owned solely by the Company, and where applicable, all Subject Ideas and Inventions shall be considered works made for hire. I shall mark all Subject Ideas and Inventions with the Company's copyright or other proprietary notice as directed by the Company and shall take all actions deemed necessary by the Company to protect the Company's rights therein. In the event that the Subject Ideas and Inventions shall be deemed not to constitute works made for hire, or in the event that I should otherwise, by operation of law, be deemed to retain any rights (whether moral rights or otherwise) to any Subject Ideas and Inventions, I agree to assign to the Company, without further consideration, my entire right, title and interest in and to each and every such Subject Idea and Invention.

(d) Determination of Subject Ideas and Inventions. I further agree that all information and records pertaining to any idea, process, service mark, invention, technology, computer hardware or software, original work of authorship, design formula, discovery, patent, copyright, product, and all improvements, know-how, rights, and claims related to the foregoing ("Intellectual Property"), that I do not believe to be a Subject Idea or Invention, but that is conceived, developed, or reduced to practice by the Company (alone by me or with others) during the period of my employment and for one (1) year after the termination of such employment, shall be disclosed promptly by me to the Company (such disclosure to be received in confidence). The Company shall examine such information to determine if in fact the Intellectual Property is a Subject Idea or Invention subject to this Agreement.

(e) Access. Because of the difficulty of establishing when any Subject Ideas or Inventions are first conceived by me, or whether they result from my access to Confidential Information or Company Materials, I agree that any Subject Idea and Invention shall, among other circumstances, be deemed to have resulted from my access to Company Materials if: (1) it grew out of or result from my work with the Company or is related to the business of the Company, and (2) it is made, used, sold, exploited or reduced to practice, or an application for patent, trademark, copyright or other proprietary protection is filed thereon, by me or with my significant aid, within one (1) year after my termination from employment.

21. The Employment Agreement lacks any reference to California Labor Code Section

2870, et seq., and specifically lacks the requisite written notification that the agreement does not apply to inventions that qualify fully under those provisions.

22. The above Section 3 of the Employment Agreement, entitled “Assignment of Inventions,” is an unenforceable restraint of trade that violates Section 16600 of the California Business & Professions Code and thus is void to the extent it purports to restrain Mr. Huang from engaging in his lawful profession, trade, or business.

23. Section 3 of the Employment Agreement is overbroad and unenforceable because it demands ownership of any technology invented by Mr. Huang “within one (1) year” of Mr. Huang’s termination of employment with Futurewei that nominally “relates” to Futurewei’s wide-ranging general business. As such, Section 3 of the Employment Agreement constitutes a restriction on competition and is otherwise unenforceable as a restraint of trade.

24. Section 3 of the Employment Agreement is further overbroad and unenforceable because it does not limit its restriction to reasonable geographic parameters.

25. Section 3 of the Employment Agreement is an unenforceable invention assignment clause that violates Section 2870 of the California Labor Code and thus is void to the extent it requires Mr. Huang to assign certain inventions to his former employer “within one (1) year” of his termination of employment with Futurewei.

26. Section 3 of the Employment Agreement is unenforceable because it requires Mr. Huang to assign certain inventions to his former employer that he developed entirely on his own time without using Futurewei’s equipment, supplies, facilities, or trade secrets, including inventions Mr. Huang developed at a time when he was not employed by Futurewei.

27. Section 3 of the Employment Agreement is unenforceable because it requires Mr. Huang to assign certain inventions to his former employer that did not result from any work performed by Mr. Huang for Futurewei.

28. Section 3 of the Employment Agreement is unenforceable because it requires Mr. Huang to assign certain inventions to his former employer that were conceived or reduced to practice at a time when Mr. Huang was no longer employed by Futurewei.

29. Section 3 of the Employment Agreement is an unenforceable invention assignment

1 clause that violates Section 2872 of the California Labor Code and thus is void to the extent it
2 requires Mr. Huang to assign any invention to his former employer.

3 30. Section 3 of the Employment Agreement is unenforceable because it lacks any
4 written notification to Mr. Huang that the agreement does not apply to an invention which qualifies
5 fully under the provisions of Section 2870.

6 31. Futurewei—upon information and belief at the direction of Huawei—included
7 additional unfair and lawful provisions in the Employment Agreement it required Mr. Huang to
8 sign as a condition of employment in California.

9 32. For example, the Employment Agreement contains a “Governing Law” provision
10 that specifies: “This Agreement will be governed by and construed according to the laws of the
11 State of Texas without regard to conflicts of law principles.” Ex. B at § 12(a). This provision
12 violates strong public policy of California against requiring California residents working in
13 California having their employment relationship governed by a foreign state’s laws.

14 33. Defendants concealed from Mr. Huang that Section 12(a) was unlawful when Mr.
15 Huang was required to execute the Employment Agreement.

16 34. Upon information and belief, Defendants require all of their California employees
17 to sign employment contracts containing a provision substantially identical to Section 12 of the
18 Employment Agreement and conceal from those employees that such a provision is unlawful.

19 35. As another example of the unfair and unlawful provisions contained in Mr. Huang’s
20 Employment Agreement, Section 12(b) of the Employment Agreement specifies that Mr. Huang
21 “agree[s] to the exclusive and personal jurisdiction and venue of any court on Collin County
22 Texas.” This provision violates a strong public policy of California against requiring California
23 residents that work in offices of an employer in California to agree to resolve disputes relating to
24 their employment in a foreign venue.

25 36. Upon information and belief, Defendants have required all or substantially all of
26 their California employees to execute employment contracts containing a provision substantially
27 identical to Section 12(b) of the Employment Agreement.

28 37. On or about May 31, 2013, Mr. Huang’s employment with Futurewei terminated.

1 38. On or about June 3, 2013, Mr. Huang commenced his employment with CNEX.

2 39. On or about July 30, 2016, Plaintiff Mr. Huang received a letter dated July 29, 2016
3 from Futurewei's counsel demanding that he assign certain patents to Futurewei.

4 40. Mr. Huang and CNEX are informed and believe that Futurewei contends that Mr.
5 Huang's new employment with and assignment of certain patents to CNEX violates the
6 Employment Agreement and Futurewei has threatened to enforce that agreement, including
7 Section 3. Mr. Huang and CNEX are informed and believe that Futurewei may also contend that
8 CNEX has purportedly interfered with and/or disrupted the performance of that agreement.

9 41. Mr. Huang and CNEX vigorously dispute that the assignment of certain patents to
10 CNEX is prohibited by the Employment Agreement and assert that Section 3 of the Employment
11 Agreement is void as a matter of law to the extent it requires Mr. Huang to assign any inventions
12 he developed within one year of leaving his employment at Futurewei. Mr. Huang and CNEX
13 further contend that Section 3 of the Employment Agreement is unlawful and unenforceable as a
14 matter of law and because it is overbroad, vague and unreasonable in its terms. Mr. Huang and
15 CNEX further deny any accusation or implication of unlawful or tortious interference with the
16 Employment Agreement.

17 42. To the extent that the Employment Agreement is deemed enforceable, it does not
18 require Mr. Huang or CNEX to assign the patents or intellectual property described by Futurewei
19 in their July 29, 2016 and February 2, 2017 correspondence to Mr. Huang and CNEX.

20 43. Defendants' attempts to enforce Section 3 of the Employment Agreement violates
21 Mr. Huang's rights under California law and California's fundamental public policy, and
22 constitutes an unlawful business practice and an illegal restraint of trade.

23 44. On or about September 7, 2016, CNEX, Mr. Huang, and Futurewei entered into a
24 Confidentiality and Standstill Agreement, which was amended from time to time, in order to
25 facilitate a discussion between the parties in an attempt to resolve this matter. Pursuant to the
26 Confidentiality and Standstill Agreement, the parties agreed not to bring, file or institute in any
27 way any complaint, pleading or action of any type between the parties related to certain allegations.
28 Futurewei provided notice of termination on December 23, 2017, meaning the Confidentiality and

1 Standstill Agreement is terminated at 12:00 pm PST on December 28, 2017.

2 45. On December 28, 2017, Defendants filed a complaint in the United States District
3 Court for the Eastern District of Texas, *Huawei Technologies Co., LTD., et al. v. Huang et al.*,
4 Case No. 4:17-cv-00893, asserting 22 causes of action against Plaintiffs. Ex. A.

5 **FIRST CAUSE OF ACTION**

6 **UNFAIR BUSINESS PRACTICE UNDER CAL. BUS. & PROF. CODE § 17200 et seq.**

7 **(by Plaintiffs against Defendants)**

8 46. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-45
9 of this Complaint, and incorporates them herein.

10 47. Defendants have engaged in unlawful business practices, as described above, by
11 requiring employees residing and working in California to sign employment contracts containing
12 unfair and unlawful provisions that violate California public policy. Upon information and belief
13 Defendants do so with the aim of misleading those employees into believing they must comply
14 with such unfair and unlawful provisions and to increase the barriers and costs of employees to
15 protect and/or enforce their rights under California law.

16 48. Plaintiffs have suffered injury in fact, at least by virtue of Defendants' claim that
17 they own patent applications filed by Plaintiff Huang—and assigned to Plaintiff CNEX—after
18 termination of his employment with Futurewei. The threatened loss of this property by Plaintiffs
19 would result directly from Defendants' unfair and unlawful business practices of requiring
20 California employees to execute unfair and unlawful employment agreements, such as Mr.
21 Huang's Employment Agreement, as a condition of employment in California. In addition,
22 Plaintiffs have incurred the financial loss of paying legal fees and certain costs (such as
23 transportation costs) associated with Defendants' attempt to enforce the unlawful Employment
24 Agreement, which would not have been incurred but for Defendants' unfair and unlawful business
25 practice.

SECOND CAUSE OF ACTION

DECLARATORY RELIEF

(by Plaintiffs against Defendants)

49. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-48 of this Complaint, and incorporates them herein.

50. An actual controversy has arisen and now exists between Plaintiffs and Defendants over purported restrictions on Mr. Huang's employment activities following termination of the Employment Agreement, as evidenced by the parties' failed negotiations and the case pending in the United States District Court for the Eastern District of Texas. *Huawei Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

51. Plaintiffs contend that Section 3 of the Employment Agreement should be governed by and construed under California law and that Section 3 of the Employment Agreement is invalid and unenforceable as a matter of law under Business & Professions Code §§ 16600 *et seq.* Business & Professions Code § 16600 provides, in pertinent part, that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

52. The Employment Agreement provides that it is governed by the laws of the state of Texas, and that venue for any action arising out of the agreement shall be in the state or federal courts in Collin County, Texas. The laws of the State of Texas relating to contract provisions such as Section 3 of the Employment Agreement are in fundamental conflict with California. The State of California has a materially greater interest than the State of Texas in having its laws applied to decide the enforceability of Section 3 of the Employment Agreement (a) because of the strong public policy in California in favor of free mobility of employees and against provisions restraining anyone from engaging in any lawful profession, trade, or business; and (b) because Section 3 of the Employment Agreement is interfering with the California-based employment relationship between Mr. Huang and CNEX.

53. Further, the forum-selection clause in the Employment Agreement is unenforceable because it contravenes California's strong public policy against requiring California employees to

1 adjudicate California claims outside of the state, as declared in California Labor Code § 925. Mr.
 2 Huang resides and works in California, and the claims at issue all arise from conduct which took
 3 place in California. Nevertheless, Defendants, which are national and multinational companies,
 4 wish to enforce a forum-selection clause that would require Mr. Huang to take on the burden of
 5 traveling to and adjudicating these claims in Texas: a requirement that is so unfair under California
 6 public policy that Labor Code § 925 deems it unlawful.

7 54. Plaintiffs respectfully seek a judicial declaration that this case may properly
 8 proceed in California, that California law governs the enforceability of Section 3 of the
 9 Employment Agreement, and that the Employment Agreement is invalid and unenforceable under
 10 California law, including Section 3.

11 55. To the extent that the Employment Agreement is deemed enforceable, Plaintiffs
 12 respectfully seek a judicial declaration that neither he nor CNEX is contractually obligated to
 13 assign any of the inventions or intellectual property in dispute to Futurewei.

14 56. A judicial determination is necessary and appropriate at this time and under the
 15 circumstances herein alleged to determine the parties' respective rights, duties and liabilities with
 16 respect to the Employment Agreement.

17 **THIRD ALLEGED CAUSE OF ACTION**

18 **DECLARATORY RELIEF REGARDING BREACH OF CONTRACT**

19 **Failing to Disclose and Assign Patents Containing Futurewei Technology**

20 **(by Plaintiff Huang against Defendants)**

21 57. Mr. Huang repeats and alleges each and every allegation contained in paragraphs
 22 1-56 of this Complaint, and incorporates them herein.

23 58. Defendants alleged that Mr. Huang breached his Employment Agreement by failing
 24 to disclose and assign patents containing Futurewei technology.

25 59. Mr. Huang did not breach his Employment Agreement by failing to disclose and
 26 assign patents containing Futurewei technology.

27 60. An actual controversy exists between Mr. Huang and Defendants, as evidenced by
 28 the case pending in the United States District Court for the Eastern District of Texas, *Huawei*

1 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

2 61. Mr. Huang respectfully seeks a judicial declaration that he has not breached his
3 Employment Agreement by failing to disclose and assign patents containing Futurewei
4 technology.

5 **FOURTH ALLEGED CAUSE OF ACTION**

6 **DECLARATORY RELIEF REGARDING BREACH OF CONTRACT**

7 **Disclosure of Confidential Information**

8 **(by Plaintiff Huang against Defendants)**

9 62. Mr. Huang repeats and alleges each and every allegation contained in paragraphs
10 1-61 of this Complaint, and incorporates them herein.

11 63. Defendants alleged that Mr. Huang breached his Employment Agreement by
12 disclosing confidential information.

13 64. Mr. Huang did not breach his Employment Agreement by disclosing confidential
14 information.

15 65. An actual controversy exists between Mr. Huang and Defendants, as evidenced by
16 the case pending in the United States District Court for the Eastern District of Texas, *Huawei*
17 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

18 66. Mr. Huang respectfully seeks a judicial declaration that he has not breached his
19 Employment Agreement by disclosing confidential information.

20 **FIFTH CAUSE OF ACTION**

21 **DECLARATORY RELIEF REGARDING BREACH OF CONTRACT**

22 **Solicitation of Futurewei Employees**

23 **(by Plaintiff Huang against Defendants)**

24 67. Mr. Huang repeats and alleges each and every allegation contained in paragraphs
25 1-66 of this Complaint, and incorporates them herein.

26 68. Defendants alleged that Mr. Huang breached his Employment Agreement by
27 soliciting Futurewei employees.

28 69. Mr. Huang did not breach his Employment Agreement by soliciting Futurewei

employees.

70. An actual controversy exists between Mr. Huang and Defendants, as evidenced by the case pending in the United States District Court for the Eastern District of Texas. Huawei Technologies Co., LTD. v. Huang, Case No. 4:17-cv-00893. Ex. A.

71. Mr. Huang respectfully seeks a judicial declaration that he has not breached his Employment Agreement by soliciting Futurewei employees.

SIXTH CAUSE OF ACTION

DECLARATORY RELIEF REGARDING MISAPPROPRIATION OF TRADE

SECRETS

Defend Trade Secrets Act – 18 U.S.C. §§ 1832, 1836, et seq.

(by Plaintiffs against Defendants)

72. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-71 of this Complaint, and incorporate them herein.

73. Defendants alleged that Plaintiffs misappropriated Defendants' trade secrets under the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836, et seq.

74. Plaintiffs did not misappropriate Defendants' trade secrets under the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836, et seq.

75. An actual controversy exists between Plaintiffs and Defendants, as evidenced by the case pending in the United States District Court for the Eastern District of Texas, Huawei Technologies Co., LTD. v. Huang, Case No. 4:17-cv-00893. Ex. A.

76. Plaintiffs respectfully seek a judicial declaration that they have not misappropriated Defendants' trade secrets under the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836, et seq.

SEVENTH CAUSE OF ACTION

DECLARATORY RELIEF REGARDING THREATENED

MISAPPROPRIATION OF TRADE SECRETS

Defend Trade Secrets Act – 18 U.S.C. §§ 1832, 1836, et seq.

(by Plaintiffs against Defendants)

77. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-76

1 of this Complaint, and incorporate them herein.

2 78. Defendants alleged that Plaintiffs threatened misappropriation of Defendants' trade
3 secrets under the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836, et seq.

4 79. Plaintiffs have not threatened misappropriation of Defendants' trade secrets under
5 the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836, et seq.

6 80. An actual controversy exists between Plaintiffs and Defendants, as evidenced by
7 the case pending in the United States District Court for the Eastern District of Texas, *Huawei*
8 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

9 81. Plaintiffs respectfully seek a judicial declaration that they have not threatened
10 misappropriation of Defendants' trade secrets under the Defend Trade Secrets Act 18 U.S.C. §§
11 1832, 1836, et seq.

12 **EIGHTH CAUSE OF ACTION**

13 **DECLARATORY RELIEF REGARDING CONSPIRACY TO**

14 **MISAPPROPRIATE TRADE SECRETS**

15 **Defend Trade Secrets Act – 18 U.S.C. §§ 1832, 1836, et seq.**

16 **(by Plaintiffs against Defendants)**

17 82. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-81
18 of this Complaint, and incorporate them herein.

19 83. Defendants alleged that Plaintiffs conspired to misappropriate Defendants' trade
20 secrets under the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836, et seq.

21 84. Plaintiffs have not conspired to misappropriate Defendants' trade secrets under the
22 Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836, et seq.

23 85. An actual controversy exists between Plaintiffs and Defendants given the live case
24 pending in the United States District Court for the Eastern District of Texas, *Huawei Technologies*
25 *Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

26 86. Plaintiffs respectfully seek a judicial declaration that they have not conspired to
27 misappropriate Defendants' trade secrets under the Defend Trade Secrets Act 18 U.S.C. §§ 1832,
28 1836, et seq.

NINTH CAUSE OF ACTION

DECLARATORY RELIEF REGARDING MISAPPROPRIATION OF TRADE

SECRETS UNDER COMMON LAW

(by Plaintiffs against Defendants)

87. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-86 of this Complaint, and incorporate them herein.

88. Defendants alleged that Plaintiffs misappropriated Defendants' trade secrets under common law.

89. Plaintiffs have not misappropriated Defendants' trade secrets under the common law.

90. An actual controversy exists between Plaintiffs and Defendants, as evidenced by the case pending in the United States District Court for the Eastern District of Texas. *Huawei Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

91. Plaintiffs respectfully seek a judicial declaration that they have not misappropriated Defendants' trade secrets under the common law.

TENTH CAUSE OF ACTION

DECLARATORY RELIEF REGARDING MISAPPROPRIATION OF TRADE

SECRETS UNDER TEXAS UNIFORM TRADE SECRETS ACT

(by Plaintiffs against Defendants)

92. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-91 of this Complaint, and incorporate them herein.

93. Defendants alleged that Plaintiffs misappropriated Defendants' trade secrets under TUTSA.

94. Plaintiffs have not misappropriated Defendants' trade secrets under TUTSA.

95. An actual controversy exists between Plaintiffs and Defendants, as evidence by the case pending in the United States District Court for the Eastern District of Texas, *Huawei Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

96. Plaintiffs respectfully seek a judicial declaration that they have not misappropriated

1 Defendants' trade secrets under TUTSA.

2 **ELEVENTH CAUSE OF ACTION**

3 **DECLARATORY RELIEF REGARDING THREATENED MISAPPROPRIATION OF**
4 **TRADE SECRETS UNDER TEXAS UNIFORM TRADE SECRETS ACT**

5 **(By Plaintiffs against Defendants)**

6 97. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-96
7 of this Complaint, and incorporate them herein.

8 98. Defendants alleged that Plaintiffs have threatened misappropriation of Defendants'
9 trade secrets under TUTSA.

10 99. Plaintiffs have not threatened misappropriation of Defendants' trade secrets under
11 TUTSA.

12 100. An actual controversy exists between Plaintiffs and Defendants, as evidenced by
13 the case pending in the United States District Court for the Eastern District of Texas, *Huawei*
14 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

15 101. Plaintiffs respectfully seek a judicial declaration that they have not threatened
16 misappropriation of Defendants' trade secrets under TUTSA.

17 **TWELFTH CAUSE OF ACTION**

18 **DECLARATORY RELIEF REGARDING CONSPIRACY**

19 **TO MISAPPROPRIATE TRADE SECRETS**

20 **TEXAS UNIFORM TRADE SECRETS ACT**

21 **(By Plaintiffs against Defendants)**

22 102. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
23 101 of this Complaint, and incorporate them herein.

24 103. Defendants alleged that Plaintiffs have conspired to misappropriate Defendants'
25 trade secrets under TUTSA.

26 104. Plaintiffs have not conspired to misappropriate Defendants' trade secrets under
27 TUTSA.

28 105. An actual controversy exists between Plaintiffs and Defendants, as evidenced by

1 the case pending in the United States District Court for the Eastern District of Texas, *Huawei*
2 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

3 106. Plaintiffs respectfully seek a judicial declaration that they have not conspired to
4 misappropriate Defendants' trade secrets under TUTSA.

5 **THIRTEENTH CAUSE OF ACTION**

6 **DECLARATORY RELIEF REGARDING TORTIOUS INTERFERENCE WITH**
7 **CONTRACTUAL RELATIONS**

8 **(By Plaintiff CNEX against Defendants)**

9 107. CNEX repeats and alleges each and every allegation contained in paragraphs 1-106
10 of this Complaint, and incorporates them herein.

11 108. Defendants alleged that CNEX has tortiously interfered with contractual relations
12 between Mr. Huang and Futurewei.

13 109. CNEX has not tortiously interfered with contractual relations between Mr. Huang
14 and Futurewei.

15 110. An actual controversy exists between CNEX and Defendants, as evidenced by the
16 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
17 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

18 111. CNEX respectfully seeks a judicial declaration that it has not tortiously interfered
19 with contractual relations between Mr. Huang and Futurewei.

20 **FOURTEENTH CAUSE OF ACTION**

21 **DECLARATORY RELIEF REGARDING TORTIOUS INTERFERENCE WITH**
22 **PROSPECTIVE BUSINESS RELATIONS**

23 **(By Plaintiff CNEX against Defendants)**

24 112. CNEX repeats and alleges each and every allegation contained in paragraphs 1-111
25 of this Complaint, and incorporates them herein.

26 113. Defendants alleged that CNEX has tortiously interfered with Defendants'
27 prospective business relations.

28 114. CNEX has not tortiously interfered with Defendants' prospective business

1 relations.

2 115. An actual controversy exists between CNEX and Defendants, as evidenced by the
3 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
4 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

5 116. CNEX respectfully seeks a judicial declaration that it has not tortiously interfered
6 with Defendants' prospective business relations.

7 **FIFTEENTH CAUSE OF ACTION**

8 **DECLARATORY RELIEF REGARDING CONSPIRACY TO COMMIT COMPUTER**
9 **FRAUD AND ABUSE ACT ("CFAA")**

10 **18 U.S.C. §§ 1030, et seq.**

11 **(By Plaintiffs against Defendants)**

12 117. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
13 116 of this Complaint, and incorporate them herein.

14 118. Defendants alleged that Plaintiffs have conspired to commit CFAA violations under
15 18 U.S.C. §§ 1030, et seq.

16 119. Plaintiffs have not conspired to commit CFAA violations under 18 U.S.C. §§ 1030,
17 et seq.

18 120. An actual controversy exists between CNEX and Defendants, as evidenced by the
19 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
20 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

21 121. Plaintiffs respectfully seek a judicial declaration that they have not conspired to
22 commit CFAA violations under 18 U.S.C. §§ 1030, et seq.

23 **SIXTEENTH CAUSE OF ACTION**

24 **DECLARATORY RELIEF REGARDING RICO 18 U.S.C. § 1962(c)**

25 **(By Plaintiffs against Defendants)**

26 122. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
27 121 of this Complaint, and incorporate them herein.

28 123. Defendants alleged that Plaintiffs have committed RICO violations under 18 U.S.C.

1 § 1962(c).

2 124. Plaintiffs have not committed RICO violations under 18 U.S.C. § 1962(c).

3 125. An actual controversy exists between CNEX and Defendants, as evidenced by the
4 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
5 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

6 126. Plaintiffs respectfully seek a judicial declaration that they have not committed
7 RICO violations under 18 U.S.C. § 1962(c).

8 **SEVENTEENTH CAUSE OF ACTION**

9 **DECLARATORY RELIEF REGARDING RICO CONSPIRACY 18 U.S.C. § 1962(d)**

10 **(By Plaintiffs against Defendants)**

11 127. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
12 126 of this Complaint, and incorporate them herein.

13 128. Defendants alleged that Plaintiffs have conspired to commit RICO violations under
14 18 U.S.C. § 1962(d).

15 129. Plaintiffs have not conspired to commit RICO violations under 18 U.S.C. §
16 1962(d).

17 130. An actual controversy exists between CNEX and Defendants, as evidenced by the
18 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
19 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

20 131. Plaintiffs respectfully seek a judicial declaration that they have not conspired to
21 commit RICO violations under 18 U.S.C. § 1962(d).

22 **EIGHTEENTH CAUSE OF ACTION**

23 **DECLARATORY RELIEF REGARDING CONVERSION**

24 **(By Plaintiffs against Defendants)**

25 132. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
26 131 of this Complaint, and incorporate them herein.

27 133. Defendants alleged that Plaintiffs have converted Defendants' intellectual property.

28 134. Plaintiffs have not converted Defendants' intellectual property.

1 135. An actual controversy exists between CNEX and Defendants, as evidenced by the
2 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
3 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

4 136. Plaintiffs respectfully seek a judicial declaration that they have not converted
5 Defendants' intellectual property.

6 **NINETEENTH CAUSE OF ACTION**

7 **DECLARATORY RELIEF REGARDING BREACH OF FIDUCIARY DUTY**

8 **(By Plaintiff Huang against Defendants)**

9 137. Mr. Huang repeats and alleges each and every allegation contained in paragraphs
10 1-136 of this Complaint, and incorporates them herein.

11 138. Defendants alleged that Mr. Huang has breached his fiduciary duties to Futurewei.

12 139. Mr. Huang has not breached his fiduciary duties to Futurewei.

13 140. An actual controversy exists between CNEX and Defendants, as evidenced by the
14 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
15 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

16 141. Mr. Huang respectfully seeks a judicial declaration that he has not breached his
17 fiduciary duties to Futurewei.

18 **TWENTIETH CAUSE OF ACTION**

19 **DECLARATORY RELIEF REGARDING UNJUST ENRICHMENT**

20 **(By Plaintiffs against Defendants)**

21 142. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
22 141 of this Complaint, and incorporate them herein.

23 143. Defendants alleged that Plaintiffs have unjustly enriched themselves by their
24 misappropriation of Defendants' trade secrets and other confidential, proprietary, and trade secret
25 information.

26 144. Plaintiffs have not unjustly enriched themselves by misappropriation of
27 Defendants' trade secrets and other confidential, proprietary, and trade secret information.

28 145. An actual controversy exists between CNEX and Defendants, as evidenced by the

1 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
2 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

3 146. Plaintiffs respectfully seek a judicial declaration that they have not unjustly
4 enriched themselves by misappropriation of Defendants' trade secrets and other confidential,
5 proprietary, and trade secret information.

6 **TWENTY-FIRST CAUSE OF ACTION**

7 **DECLARATORY RELIEF REGARDING COMMON LAW CIVIL CONSPIRACY**

8 **(By Plaintiffs against Defendants)**

9 147. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
10 146 of this Complaint, and incorporate them herein.

11 148. Defendants alleged that Plaintiffs have committed common law civil conspiracy to
12 accomplish the unlawful purposes and torts discussed in this Complaint.

13 149. Plaintiffs have not committed common law civil conspiracy to accomplish the
14 unlawful purposes and torts discussed in this Complaint.

15 150. An actual controversy exists between CNEX and Defendants, as evidenced by the
16 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
17 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

18 151. Plaintiffs respectfully seek a judicial declaration that they have not committed
19 common law civil conspiracy to accomplish the unlawful purposes and torts discussed in this
20 Complaint.

21 **TWENTY-SECOND CAUSE OF ACTION**

22 **DECLARATORY RELIEF REGARDING CORPORATE RAIDING**

23 **(By Plaintiffs against Defendants)**

24 152. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
25 151 of this Complaint, and incorporate them herein.

26 153. Defendants alleged that Plaintiffs have committed corporate raiding.

27 154. No claim for corporate raiding exists and thus Plaintiffs cannot be liable for any
28 claim for corporate raiding. But to the extent that such a claim does exist, Plaintiffs have not

1 committed corporate raiding.

2 155. An actual controversy exists between CNEX and Defendants, as evidenced by the
3 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
4 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

5 156. Plaintiffs respectfully seek a judicial declaration that they have not committed
6 corporate raiding.

7 **TWENTY-THIRD CAUSE OF ACTION**
8 **DECLARATORY RELIEF REGARDING UNFAIR COMPETITION UNDER LANHAM**
9 **ACT AND TEXAS COMMON AND STATUTORY LAW**
10 **(By Plaintiffs against Defendants)**

11 157. Plaintiffs repeat and allege each and every allegation contained in paragraphs 1-
12 156 of this Complaint, and incorporate them herein.

13 158. Defendants alleged that Plaintiffs have committed unfair competition under the
14 Lanham Act 15 U.S.C. § 1125(a) and Texas common and statutory law.

15 159. Plaintiffs have not committed unfair competition under the Lanham Act 15 U.S.C.
16 § 1125(a) and Texas common and statutory law, nor does Texas law apply to the parties'
17 relationship.

18 160. An actual controversy exists between CNEX and Defendants, as evidenced by the
19 case pending in the United States District Court for the Eastern District of Texas, *Huawei*
20 *Technologies Co., LTD. v. Huang*, Case No. 4:17-cv-00893. Ex. A.

21 161. Plaintiffs respectfully seek a judicial declaration that they have not committed
22 unfair competition under the Lanham Act 15 U.S.C. § 1125(a) and Texas common and statutory
23 law.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for judgment as follows:

26 1. A judgment in favor of Plaintiffs against Defendants finding that Defendants
27 violated Cal. Bus. & Prof. Code § 17200 et seq.;

28 2. A declaration that Mr. Huang's Employment Agreement is void;

1 3. An injunction barring Defendants from seeking to enforce Mr. Huang's
2 Employment Agreement;

3 4. A declaration that all employment agreements between Defendants and California
4 residents containing provisions substantially identical to those in Mr. Huang's Employment
5 Agreement are void;

6 5. An injunction barring Defendants from enforcing all employment agreements
7 between Defendants and California residents containing provisions substantially identical to those
8 in Mr. Huang's Employment Agreement;

9 6. An injunction barring Defendants from engaging in the unfair business practices
10 described herein;

11 7. An award of damages to Plaintiffs for their injuries in an amount to be determined
12 at trial;

13 8. For a declaration by the Court that this case may properly proceed in California,
14 that California law governs the enforceability of Section 3 of the Employment Agreement, and
15 that Section 3 of the Employment Agreement is invalid and unenforceable against Mr. Huang;

16 9. In the alternative, and to the extent that the Employment Agreement is deemed
17 enforceable, for a declaration by the Court that the intellectual property and patents involved in
18 this dispute are not captured by the language of the agreement and Mr. Huang is not contractually
19 obligated to assign any inventions or intellectual property to Futurewei;

20 10. To the extent that the Employment Agreement is deemed enforceable, for a
21 declaration by the Court that Plaintiffs have not committed breach of contract for failure to disclose
22 and assign patents containing Futurewei technology, breach of contract for disclosure of
23 confidential information, breach of contract for solicitation of Futurewei employees,
24 misappropriation, threatened misappropriation, and conspiracy to misappropriate trade secrets
25 under the Defend Trade Secrets Act 18 U.S.C. §§ 1832, 1836 et seq., misappropriation of trade
26 secrets under common law, misappropriation, threatened misappropriation, and conspiracy to
27 misappropriate trade secrets under TUTSA, tortious interference with contractual relations,
28 tortious interference with prospective business relations, conspiracy to commit violations of CFAA

1 18 U.S.C. §§ 1030, et seq., violations and conspiracy to violate RICO 18 U.S.C. § 1962(c),
2 conversion, breach of fiduciary duty, unjust enrichment, common law civil conspiracy, corporate
3 raiding, and unfair competition under the Lanham Act 15 U.S.C. § 1125(a) and Texas Common
4 and Statutory Law;

5 11. For all attorneys' fees and costs incurred by Plaintiffs in investigating, bringing and
6 prosecuting this action; and

7 12. For such other and further relief as the Court may deem just, proper and appropriate.
8

9 Dated: February 14, 2018

FENWICK & WEST LLP

11 By: /s/ Michael J. Sacksteder
12 Michael J. Sacksteder

13 Attorneys for Plaintiffs
14 CNEX LABS, INC. and YIREN HUANG
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1 DEMAND FOR JURY TRIAL

2 Plaintiffs Yiren Huang and CNEX Labs, Inc. hereby demand a trial by jury on all issues and
3 all causes of action alleged herein on which a right to a jury trial exists as a matter of law.
4

5 Dated: February 14, 2018

FENWICK & WEST LLP

6
7 By: /s/ Michael J. Sacksteder

8 Michael J. Sacksteder

9 Attorneys for Plaintiffs
10 CNEX LABS, INC. and YIREN HUANG
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